

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1902 of 1997

For Approval and Signature:**HONOURABLE MS. JUSTICE R.M.DOSHIT**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to civil judge ?

=====

SUMANBHAI T GAMIT & 1 - Petitioner(s)*Versus***STATE OF GUJARAT & 1 - Respondent(s)**

=====

Appearance :

MR SHAILESH C PARIKH for Petitioner

MS MITA PANCHAL AGP for Respondent(s) : 1, 3,

MR JS BAROT for Mr HS MUNSHAW for Respondent(s) : 2,

=====

CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**Date : 18/09/2006****ORAL JUDGMENT***Heard* the learned advocates.

The petitioner, a former employee of the
respondent-District Panchayat, Surat [hereinafter

referred to as, "***the District Panchayat***"] seeks reinstatement and regularization in service.

It is not in dispute that the petitioner was appointed by the Executive Engineer, Roads & Building Department, District Panchayat, Surat as a Work-charge Karkun temporarily for a period of two months from 25th February, 1982 to 25th April, 1982. The said arrangement continued for a pretty long time. However, since the year 1995, the petitioner's service had been discontinued. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Parikh has submitted that the petitioner was not regularized in service only on the ground that he had not approached the Court of law and obtained order in his favour. He has submitted that similarly situated employees of the District Panchayat were, pursuant to the order dated 15th November, 1988 of the *Hon'ble* Supreme Court, given the benefit of regularization in service. The said benefit, however, has been denied to the petitioner.

It appears that a group of employees of the District Panchayat had sought regularization in

service. The claim made by the said employees was rejected by this Court. The *Hon'ble* Supreme Court by its Order dated 15th November, 1988 recorded that, *"..Though they were not appointed in accordance with the procedure prescribed by the recruitment rules, namely, through the District Selection Committee. We have considered all the facts and circumstances of the case. It seems to us just and proper that out of these Appellants who also the Respondents referred to hereinbefore, those who have not appeared as yet before the Selection Committee should be given a chance to appear before the Selection Committee and in case some of them have become age barred, the Authority concerned will relax the age bar and permit them to appear before the ensuing selection by the Selection Committee. Those who are qualified and selected by the Selection Committee will have their service regularized. So far as the question of continuity of service is concerned, it will be open to the authority to consider and decide the same. The authority concerned will of course leave out the artificial breaks in service for short periods."*

It is not in dispute that the present

petitioner was neither the petitioner nor the respondent before the *Hon'ble* Supreme Court. It is also not in dispute that during his long service from the year 1982 to 1995, the petitioner never applied for selection through the District Panchayat Service Selection Committee. Mr. Parikh has relied upon the communication dated 17th April, 1989 sent by the Deputy Executive Engineer, Panchayat [R&B] Sub-Division, Valod addressed to the Executive Engineer, District Panchayat. It appears that pursuant to certain information sought by the Executive Engineer, District Panchayat, Surat, the concerned Deputy Executive Engineer had furnished detailed information of SSC passed work-charged Karkuns working under him; one of them being the petitioner. However, it is far from truth that the said information was sent in compliance with the aforesaid directions issued by the *Hon'ble* Supreme Court. There is nothing on record to suggest that the petitioner was called upon to appear before the District Panchayat Service Selection Committee nor did the petitioner ever bother to undergo the recruitment procedure conducted by the District Panchayat Service Selection

Committee. Besides, the respondent has filed counter affidavit stating that the petitioner was appointed temporarily on work charge basis. On completion of the concerned project, his service was not continued further.

Be that as it may, it is not disputed that the petitioner is out of Panchayat service since the year 1995. It is also not disputed that the appointment of the petitioner was temporary and was contrary to the statutory recruitment rules. The petitioner had not been selected by the District Panchayat Service Selection Committee. In absence of proper recruitment, the petitioner's claim for reinstatement or regularization in service is not tenable. Further, by now, the petitioner has attained the age of 45 years and the petitioner is out of service of the District Panchayat for last twelve years. Therefore also, the petitioner cannot be ordered to be reinstated in service.

In above view of the matter, the petition is dismissed. Rule is *discharged*. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

*Prakash**